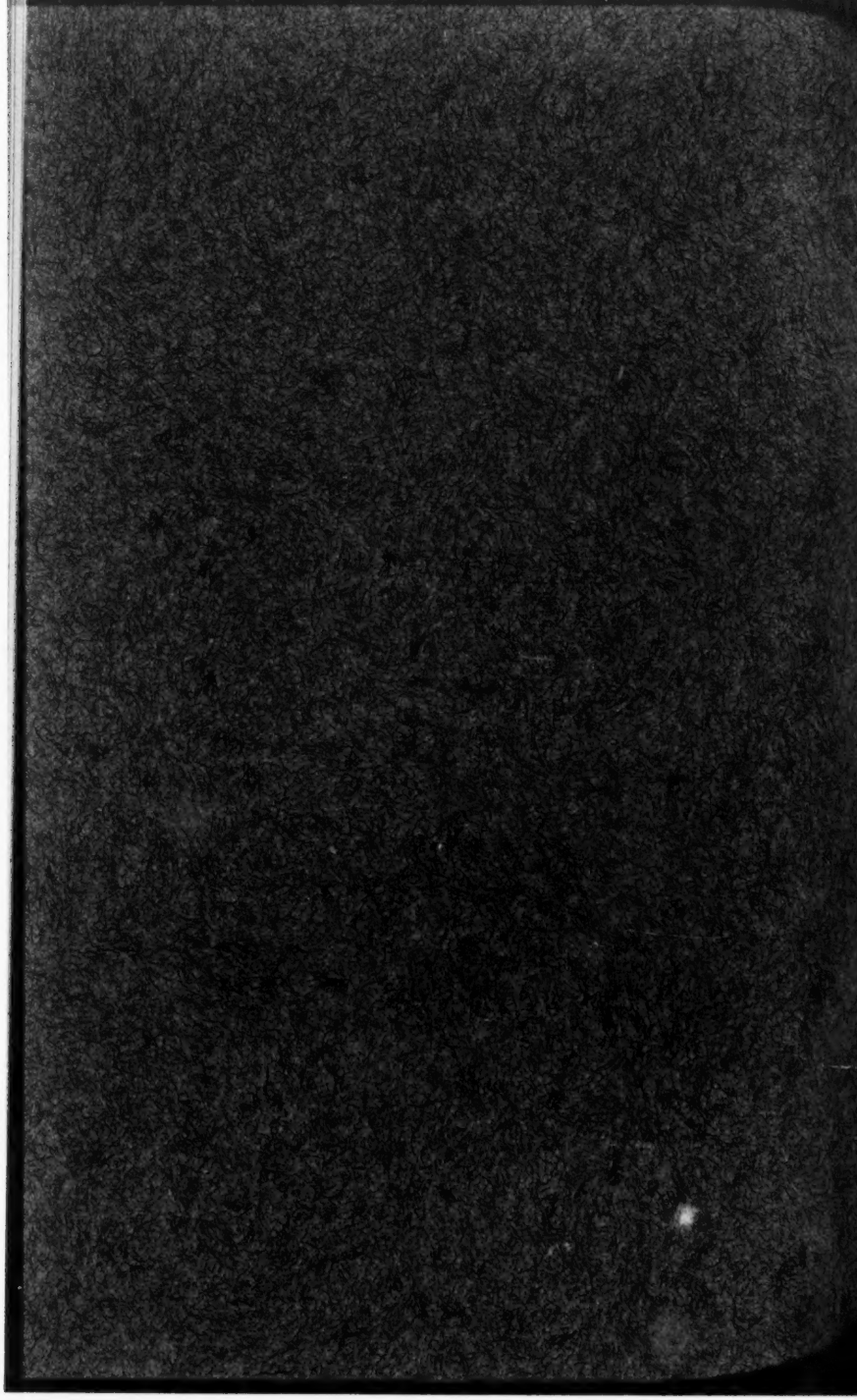

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In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 657

SEGAL LOCK & HARDWARE COMPANY, INC., NORWALK LOCK COMPANY, AND LOUIS SEGAL, PETITIONERS

v.

FEDERAL TRADE COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE FEDERAL TRADE COMMISSION IN OPPOSITION

OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 742) is reported in 143 F. (2d) 935.

JURISDICTION

The decree of the Circuit Court of Appeals was entered on August 8, 1944 (R. 755). The petition for a writ of certiorari was filed on November 6, 1944. The jurisdiction of this Court is invoked under Section 5 of the Federal Trade Commission Act, as amended, 52 Stat. 111, 15

U. S. C. 45, and Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the Commission's finding that petitioners' lock is not pick-proof is supported by substantial evidence.

2. Whether the Commission denied petitioners a fair hearing.

STATUTE INVOLVED

Section 5 of the Federal Trade Commission Act, as amended by the Act of March 21, 1938, 52 Stat. 111, 15 U. S. C. 45, provides in part as follows:

> (a) Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful.
>
> The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations * * *, from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce.

STATEMENT

In a proceeding under Section 5 of the Federal Trade Commission Act, the Commission charged petitioners with using unfair methods of competition, and unfair and deceptive practices in commerce (R. 10–11). After a hearing the Commission made the following findings:

Petitioners (Segal Lock and Hardware Company, Inc., Norwalk Lock Company, its wholly owned subsidiary, and Louis Segal, the president and treasurer of both corporations) are engaged in the manufacture, sale, and distribution in interstate commerce of locks and lock cylinders, including a cylinder which is variously designated as the Segal Pick-Proof Lock Cylinder and Segal Pick-Proof Cylinder (R. 65). Petitioners advertise this lock cylinder extensively through advertisements in newspapers, periodicals, and trade journals, as well as by circulars and radio broadcasts (R. 66). In these advertisements petitioners represent that their lock cylinder cannot be picked (R. 68).[1]

The Commission found that picking a lock means opening it without the use of the original or duplicate keys and without damage to the lock (R. 68); that petitioners' lock is not in fact pick-proof (R. 70); that petitioners' representations

[1] Petitioners make the following claims for their product (R. 67):

"Impossible to Open By Any Method of Lock Picking."

"It cannot be picked, or opened, by any skill, art or machine."

"Nothing But the Proper Key Will Open It."

"The First Absolute Guarantee of Complete Safety From The Lock-Picking Menace."

"The New Segal Cylinder is absolute proof against lock-picking and is the only certain protection against the dangerous picking gun."

"The only genuine pick-proof cylinder ever invented."

"It will protect your home and possessions by making the lock on your door *absolutely* pick-proof."

with respect to the invulnerability of their lock are erroneous and misleading (R. 72); and that petitioners should therefore be required to cease and desist from representing that their lock cannot be picked (R. 73–75). Upon petition for review, the court below affirmed the Commission's order (R. 754).

ARGUMENT

The Commission's finding that petitioners' lock is not pick-proof is supported by substantial evidence. Petitioners contend that picking a lock means opening it by the conventional picks or instruments ordinarily used by locksmiths and burglars (R. 743). The Commission found, however, that a lock is not pick-proof if it can be opened in any manner without using the original or duplicate keys and without damaging the lock (R. 68). This definition was based upon the testimony of numerous expert witnesses (R. 328, 383–384, 513, 527, 533). Furthermore, each of three locksmiths testifying for the Commission declared that he had successfully picked the Segal Lock—one of them several dozen times and the other two from thirty to forty times (R. 69, 234, 335, 399). Six witnesses called by Segal testified that they had failed to pick the lock (R. 69); but the Commission was free to infer from their testimony only that some locksmiths cannot pick the lock. Since the evidence was conflicting, the Commission's findings will not be set aside. *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U. S. 67, 73; *Federal Trade Commission* v. *Standard Education Society*, 302 U. S. 112, 117.

Petitioners contend that they were denied a fair hearing because they were excluded from a demonstration before the examiner by two expert locksmiths who undertook to pick the Segal Lock, and because they were not permitted to make a full cross-examination of these witnesses (Br. 13). For purposes of this demonstration three Segal Locks were purchased at random from hardware dealers by petitioners' counsel. Two of these locks were successfully picked by one of the witnesses without damage to the locks, the first lock in thirty minutes and the second lock in four. The second witness attempted to pick the third lock, but his instruments became caught in the lock cylinder; his attempt to open the lock was therefore abandoned. All persons except the examiner were excluded from this demonstration because the witnesses regarded their picking methods as a trade secret and refused to reveal their tools and technique (R. 69). On cross-examination these witnesses refused to answer questions seeking to expose their esoteric methods, and in this they were upheld by the examiner (R. 293–296, 343–344, 471).

Petitioners were not thus denied a fair hearing. In view of the Commission's finding as to what picking a lock means, the issue was not how the locks were picked but whether they could be opened without keys and without damage to the lock. If the locks could be opened in any such way, they were not pick-proof. Petitioners were not denied cross-examination with respect to that

issue. And, for the same reason, it was not unfair to exclude petitioners from the demonstration before the examiner. Petitioners affixed the locks and saw the door opened without damage to the locks and without the use of keys (R. 744–745). All they were deprived of was the privilege of seeing how it was done—and this was a trade secret which need not be disclosed "except in such cases and to such extent as may appear to be indispensable for the ascertainment of truth." 8 Wigmore, *Evidence* (3d ed.) § 2212; *Crocker-Wheeler Co.* v. *Bullock,* 134 Fed. 241, 246 (S. D. Ohio). See *E. B. Muller & Co.* v. *Federal Trade Commission,* 142 F. 2d 511, 519–520 (C. C. A. 6).

CONCLUSION

The decision below is correct, and no question of importance is presented. It is respectfully submitted that the petition for a writ of certiorari should be denied.

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